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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,716	04/02/2004	Eric Evert Voogt	90000-A	9430
2048	7590	04/01/2005	EXAMINER	
KIRBY EADES GALE BAKER BOX 3432, STATION D OTTAWA, ON K1P 6N9 CANADA			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,716

Applicant(s)

VOOGT, ERIC EVERT

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-7, 9, 11, 12, 16-20, 29 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 9, 11, 12, 16-20, 29, and 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1, 2, 4-7, 9, 11, 12, 16-20, 29, and 36-40 in the reply filed on 14 January 2005 is acknowledged.

Claim Objections

Claim 19 is objected to because of the following informalities:

Claim 19, line 1, it appears that this claim is intended to depend from claim 18 not claim 1 as presented, so "claim 1" should be changed to --claim 18--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation "said elongated rods" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 29 is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 7, 9, 16, 17, 20, 36, 37, and 40 are rejected under 35

U.S.C. 102(b) as being anticipated by Japanese Patent JP 03098515 A to Fujita.

Regarding Claims 1 and 36, Fujita teaches a plant support and combination with an open-topped plant container (Fujita Fig. 2 #3) for a growing plant (Fujita #5), said plant support comprising: a plant support member (Fujita Fig. 1 #1 vertical portion) and an anchor member (Fujita Fig. 1 #3 horizontal portion) each made of a stiff material (Fujita English abstract, last line of the Purpose), said plant support member and said anchor member being rigidly and permanently attached (Fujita Fig. 4 #1) to each other; said plant support member having a generally vertical orientation and having a lower end, an upper end remote from said lower end, and a part that is grippable (Fujita Fig. 1 horizontal bar at the top of the vertical portion of element #1) by hand adjacent to said upper end; and said anchor member being attached to said plant support member at said lower end thereof and comprising a base element extending generally horizontally, whereby said base element may be positioned beneath a mass of growth medium (Fujita Fig. 2b #4) in said container with said plant support member extending vertically from said mass of growth medium to facilitate support of a plant growing in said mass, and to facilitate lifting and transportation of said container filled with said mass of growth medium via said part of said plant support member that is grippable by hand.

Regarding Claim 2, Fujita teaches the plant support member and the anchor member are made of a single piece of stiff material (Fujita English abstract and Fig. 4 #1).

Regarding Claim 6, Fujita teaches the plant support member is in the form of two generally straight rods cross connected together at the upper end of the member by a single connecting rod (Fujita Fig. 1 #1 vertical portion and the horizontal rod across the top of the vertical portion).

Regarding Claim 7, Fujita teaches the connecting rod is the part that is grippable by hand (Fujita Fig. 1 #1 the horizontal rod across the top of the vertical portion).

Regarding Claim 9, Fujita teaches the anchor member comprises at least one elongated rod of the stiff material (Fujita English abstract and Fig. 1 horizontal portion of #1).

Regarding Claim 16, Fujita teaches the support member and the anchor member comprises an endless loop (Fujita Fig. 4 #1) of the stiff material, the loop being rectangular or trapezoid in shape, and having a 90 degree bend between parts of the loop forming the support member and parts of the loop forming the anchor member.

Regarding Claim 17, Fujita teaches the stiff material is selected from the group consisting of metal wire, plastic-coated metal wire, metal rod, plastic-coated metal rod, molded plastic rod, and molded fiberglass rod (Fujita page 2, right hand column, second paragraph from the end).

Regarding Claim 20, Fujita teaches a horizontal plant support member adapted for engaging the elongated rods (Fujita Fig. 1 top horizontal rod attached to the vertical portion), the elongated rods having confronting inner surfaces and opposite outer surfaces.

Regarding Claim 37, Fujita teaches the container has a diameter and said base member extends horizontally from said lower end of said support member by a distance equivalent to **at least** 20% of said diameter (Fujita Fig. 2a and 2b).

Regarding Claim 40, Fujita teaches the plant container has a maximum diameter and said plant support member has a maximum lateral width that is equal to or less than said maximum diameter of the plant container (Fujita Fig. 2a and 2b #1 and #3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP 03098515 A to Fujita in view of U.S. Patent No. 3,206,649 to Barakauskas.

Regarding Claim 4, Fujita teaches the plant support member is in the form of two or more elongated rods (Fujita Fig. 1), but is silent on them being cross-connected between the upper end and the lower end. However, Barakauskas teaches a plant support with to elongated rods that are cross-connected between the upper and lower end (Barakauskas Fig. 1 #44 and 54). It would have been obvious to one of ordinary skill in the art to modify the teachings of Fujita with the teachings of Barakauskas at the time of the invention since the modification is merely the known addition of additional

support for the plant and to fill in the center area of the pot to give a fuller appearance to the foliage in the flowerpot.

Regarding Claim 5, Fujita as modified teaches at least one of the connecting rods extends laterally beyond two or more of the elongated rods (Barakauskas Fig. 1 #54), thereby providing points of support for the plant extending laterally beyond the rods

Claims 11, 12, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP 03098515 A to Fujita.

Regarding Claims 11 and 12, Fujita teaches the anchor extends horizontally from the support member (Fujita Fig. 2), although it appears from the figures that horizontal anchor extends at least 2 inches, Fujita is silent implicitly teaching on the anchor extends horizontally from the plant support member by a distance of at least 2.54 cm (1 inch) or the anchor member extends horizontally from the plant support by a distance of at least 5 cm (2 inches). However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Fujita at the time of the invention since the modification is merely a change in size to accommodate different size flower pots and plant varieties and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 38, Fujita teaches a container, but is silent on the container is made of a plastics material. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Fujita at the time of the invention since the

modification is merely the selection of an old and notoriously well-known plant pot material selected for its resistance to termites. This modification is merely a selection of a known material for intended use and does not present a patentably distinct limitation [Leshin 125 USPQ 416].

Regarding Claim 39, Fujita teaches a container and a growth medium, but does not implicitly teach that the container has a weight less than the weight of said mass of said growth medium. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Fujita at the time of the invention since the modification is merely dependent upon the selection of a particular growth medium to meet the soil condition needs of a particular plant variety (e.g. if one of ordinary skill in the art selected a wet sand growing medium, wet sand has a known density of 0.069 pounds per cubic inch, which is heavier than plastic). Plastic plant containers are old and notoriously well-known in the art for their durability it is common practice to fill plastic plant containers with soil that is heavier than the plastic container to prevent the container from blowing over in high winds.

Claims 18, 19, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP 03098515 A to Fujita in view of European Patent EP 0079758 to Madonia.

Regarding Claims 18 and 29, Fujita is silent on the supporting member is provided with horizontal notches positioned at regular intervals between the upper and lower ends. However, Madonia teaches a plant support with horizontal notches

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positioned at regular intervals between the upper and lower ends (Madonia Fig. 3 #14).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Fujita with the teachings of Madonia to retain the plant ties as taught by Madonia (Madonia abstract).

Regarding Claim 19, Fujita as modified is silent on the regular intervals are separated from each other by a distance in the range of 5 to 30.5cm (2 to 13 inches). However, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the teachings of Fujita since the modification is merely the change in size of the intervals while performing the same intended function modified to accommodate different plant varieties and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Support structure: U.S. Patent No. 2,716,938; U.S. Patent No. 891,307; U.S. Patent No. 3,789,996; U.S. Patent No. 6,752,279; U.S. Patent No. 1,550,708; U.S. Patent Pub No. US 2005/0039387; U.S. Patent Des. 418,996; U.S. Patent Des. 362,206; PCT WO 2004/086852 A2; United Kingdom GB 2382514; Switzerland Patent CH 621935; United Kingdom Patent GB 2237964; PCT WO 00/76295; Japanese Patent JP 200014253A; United Kingdom Patent GB 2286105A; Japanese Patent JP 08042201A.

Horizontal Notches: U.S. Patent No. 6,209,258


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Cross Connection: Japanese Patent JP 10136796A; Canadian Patent CA
2445810.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

29 March 2005